

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt. 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All Actions

**PLAINTIFFS' STEERING COMMITTEE'S MOTION TO AMEND PREVIOUSLY
FILED SHORT FORM COMPLAINTS**

The Plaintiffs' Steering Committee (the "PSC") files this Motion to Amend Previously Filed Short Form Complaints requesting the Court deem amended previously filed short form complaints to add claims that were not yet ripe when plaintiffs first filed their short form complaints in this action.

Previously, Judge Saylor ordered that all plaintiffs with complaints pending in this MDL prior to the filing of the Master Complaint who wished to adopt the Master Complaint and be considered for bellwether selection file short form complaints by no later than December 20, 2013.¹ Numerous plaintiffs, principally from Tennessee but also from other states, fell into this category. However, not all presuit notice requirements for all plaintiffs' claims asserted in the Master Complaint could be satisfied by the deadline to file Short Form Complaints. For example, Count VI of the Master Complaint alleges violations of M.G.L.C. 93A, which requires that plaintiffs provide a defendant thirty-days advance notice prior to filing claims under this statute.²

¹ See Dkt. Nos. 438 (establishing original deadline) and 567 (extending deadline to December 20, 2013).

² See M.G.L.C. 93A, §9 (3).

Accordingly, several short form complaints contained the following allegation (or an allegation substantially similar):

Plaintiff(s) have sent or served the pre-suit notice or demand requirements necessary to bring the claims set forth below, as required under M.G.L. C. 93A. Plaintiff(s) do not now assert but will seek leave to amend to assert the following claims promptly after the time period for giving notice has expired: VIOLATION OF M.G.L. C. 93A (as set forth in Count VI of the Master Complaint).³

Given the passage of time most of these claims are now ripe. The PSC respectfully requests leave to amend all short form complaints to add claims under M.G.L.C. 93A, or any other applicable claim referenced in, but not asserted by, a Short Form Complaint, that have now become ripe.

According to the United States Court of Appeals for the First Circuit, there is a “liberal amendment policy applicable to Rule 15.” *Epstein v. C.R. Bard, Inc.*, 460 F.3d 183, 190 (1st Cir. 2006) (citing *O’Connell v. Hyatt Hotels of Puerto Rico*, 357 F.3d 152, 154 (1st Cir. 2004)). Here, defendants will suffer no prejudice by the amendment, and as made clear in the original short form complaints, defendants were put on notice several months ago that these claims would eventually be brought in this action. Accordingly, Rule 15 requires that plaintiffs be granted leave to amend the complaints as requested. An appropriate order is attached hereto.

³ See e.g., *Savercool v. Ameridose*, Case 1:13-cv-12583, Document 14, Filed 12/19/13 Page 3 of 13.

Dated: July 24, 2014

Respectfully submitted,

/s/ J. Gerard Stranch, IV

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Plaintiffs' Steering Committee

LOCAL RULE 7.1(a)(2) CERTIFICATE OF GOOD FAITH

Prior to filing this motion, the PSC attempted in good faith to contact counsel for the relevant defendants through email. The PSC received one response from counsel requesting additional information. No other responses were received. The PSC will continue to meet and confer with counsel with the hopes of narrowing the issues before the next status conference.

/s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV (TN Bar # 23045)

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: July 24, 2014

/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV (TN Bar # 23045)